IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRL.R.C.No.908 OF 2003
and
Crl.M.P.No.5479 of 2003

Shanti Vedanayagam .. Petitioner

-vs-

P.Govardhanan .. Respondent

This Revision is filed under Section 397 r/w 401Cr.P.C.against the order passed in Crl.M.P.No.8298 of 2002 in C.C.No.7268 of 2001 dated 06.05.2003 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai.

For petitioner : : Mr.M.Deivanandan
For respondent : : Mr.C.Balasubramanian

O R D E R

This revision has been preferred against the order passed by XVIII Metropolitan Magistrate, Saidapet, Chennai. in Crl.M.P.No.8298 of 2002 in C.C.No.7268 of 2001, a petition filed under Section 245 of Cr.P.C. requesting the Court to discharge the accused from the complaint.

2. Heard the learned counsel appearing for the revision petitioner who would attack the order of the learned Judicial Magistrate on two grounds. (1) A petition filed under Section 245 of Cr.P.C. in a private complaint filed under Section 200 of Cr.P.C. for an offence under Section 138 of Negotiable Instruments Act 1881 itself is not maintainable and 2) an order allowing the petition filed under Section 245 of Cr.P.C. on the ground that the complaint is not maintainable under Section 142 of Negotiable Instruments Act is not also a sound reasoning.

3. Prima facie, the petition for discharge under Section 245 of Cr.P.C. in a private complaint filed under Section 200 of Cr.P.C. for an offence under Section 138 of Negotiable Instruments Act 1881 itself is not maintainable because application filed under Section 245 of Cr.P.C. can be filed only in cases instituted otherwise than on police report.

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4. A reading of Section 245 of Cr.P.C. will go to show that only after taking all the evidence referred to under Section 244 of Cr.P.C., the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out, can discharge the accused.

5. Admittedly, in the case on hand, no witness was examined by the trial Judge. The learned trial Judge has discharged the accused on the ground that in the complaint, the complainant's name alone figures and the name of the power of attorney was not mentioned in the cause title. So the learned Judicial Magistrate has come to a conclusion that the complaint itself is not maintainable under Section 142 of Negotiable Instruments Act and accordingly allowed the petition filed by the accused with a request the discharge him from the complaint preferred under Section 200 of Cr.P.C. for an offence under Section 138 of Negotiable Instruments Act.

6. I am of the considered view that the reasoning given in a petition, which is not maintainable under law to allow the same itself is unsustainable. In fact, the learned Judicial Magistrate has allowed the application, which itself is not maintainable under law. Under such circumstances, this Court has no option but to remand the matter to the trial Court for consideration afresh.

7. In the result, the revision is allowed, setting aside the order passed by the learned Judicial Magistrate in Crl.M.P.No.8298 of 2002 in C.C.No.7268 of 2001 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai and the matter is remanded to the trial Court for fresh consideration. Consequently, connected Crl.M.P.No.5479 of 2003 is closed.

8. At this juncture, the learned counsel appearing for the revision petitioner would represent that he may be permitted to file necessary amendment petition to amend the cause title. If the petitioner files any amendment petition before the trial Court, the same may be considered by the trial Court if it is in accordance with law. It is made clear that the trial Court need not be carried away by any of the observations made by this Court in this order. The trial Judge is directed to dispose of the matter within two months from the date of receipt of a copy of this order.

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To

XVIII Metropolitan Magistrate,
Saidapet, Chennai

Crl.R.C.No.908/2003

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RVL 05.06.2007

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